

**U.S. Department of Justice**

Civil Rights Division

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*Office of the Assistant Attorney General*

*Washington, DC 20530*

August 16, 2000

J. Frank Head, Esq.  
Wallace, Ellis, Fowler & Head  
P.O. Box 587  
Columbiana, Alabama 35051

Dear Mr. Head:

This refers to 42 annexations (adopted between March 19, 1992, and March 16, 2000) and their designation to council wards of the City of Alabaster in Shelby County, Alabama, submitted pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your partial responses to our July 10, 2000, request for additional information on numerous dates between July 13 and August 16, 2000.

We have considered carefully the information you have provided, as well as Census data, and comments and information from other interested parties. As discussed later in this letter, the City of Alabaster has not yet provided a complete response to our request for additional information, and has provided information which the city subsequently has acknowledged to be inaccurate. Under these circumstances, the Attorney General would normally postpone a decision on the merits of your submission until the city has responded fully and accurately to our July 10, 2000, letter. However, the city has asked us to issue a substantive Section 5 determination regarding the submitted changes based on the current incomplete record because of the city's fast approaching August 22, 2000, election.

The Attorney General does not interpose any objection to 40 annexations designated to majority white wards adopted between March 1992 and March 2000, nor to annexation Ordinances 94-338 and 96-410. Additionally, the Attorney General does not object to the designation of 40 annexations to Council Wards 5, 6, and 7. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41). In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection to these changes comes to our attention during the remainder of the sixty-day review period. See 28 C.F.R. 51.41 and 51.43.

However, we cannot reach the same conclusion with respect to the designation of the annexations in

Ordinance Nos. 94-338 and 96-410 (hereafter referred to as the "Ward 1 annexations"). According to the 1990 Census and figures provided by the city at the time of its 1991 redistricting submission, minority residents constitute 11.0 percent of the city's population and 68.2 percent of Ward 1.

It is difficult to assess with precision the current population of the city within the existing wards. The city has provided incomplete and inconsistent data and inaccurate maps in response to our July 10, 2000, request for additional information. Each map provided by the city has subsequently been represented to contain several mistakes. Moreover, the demographic statistics provided are out of date given the city's growth in the decade and it is unclear to which precise boundaries the statistics relate. While the 2000 Census data will provide a clearer picture of the current demographics in the city, we are only able to utilize the data provided to make population estimates. The city has acknowledged that it has had exponential growth, yet has provided no response to our request for information to quantify or assess this growth.

You provided an estimate that there are 155 housing units in the proposed Ward 1 annexations. The city secretary has provided data showing that the Ward 1 annexations would add 179 white registered voters and two black registered voters, thereby decreasing the minority percentage of registered voters in this ward from 51.2 to 45.7 percent. This significant decrease in the minority voter percentage in Ward 1 appears retrogressive.

In 1975, the Attorney General found "a pattern of racial bloc voting [to be present] in city elections" in Alabaster when he objected to annexations which diluted minority voting strength under the city's then at-large election system. In our July 10, 2000, letter, we asked the city to provide state, county, school district, and municipal election returns, and related voter registration information in order to assess whether elections in Alabaster continue to be characterized by racially polarized voting. As of this time, we have not received all of the requested election returns or complete voter registration data, although you informed us on August 15, 2000, that we would be receiving them shortly. As a result, a current racial bloc voting analysis could not be completed at this time as we have not had the opportunity to review and analyze the documents. Based on our review of the records submitted, we have no basis to believe that racial bloc voting does not continue to exist in the city. Therefore, it appears that the retrogression caused by the proposed Ward 1 annexations would seriously threaten, if not eliminate, the only opportunity minority voters currently have to elect candidates of their choice to city office.

Where an annexation significantly decreases minority voting strength, the reasons for the annexations must be objectively verifiable, and legitimate, and the post-annexation election system must fairly reflect the post-annexation voting strength of the minority community. City of Richmond v. United States, 422 U.S. 358 at 371-373 (1975). Here, the designation of these annexations to Ward 1 is likely to result in the elimination of representation for a minority community which the submitted data suggest comprises 9 to 10 percent of the expanded city. Thus, the city has not carried its burden of showing that the post-annexation system will fairly reflect the post-annexation strength of the minority community.

Our analysis indicates that there were options available to and considered by the city which would have avoided the retrogressive effects of the proposed Ward 1 annexations, such as a limited redistricting that

would make the annexations contiguous to and a part of Wards 2 or 6. We understand that these options had been under discussion among city council members since at least June 2000, and that concerns about the potential retrogressive impact of the proposed Ward 1 annexations had been discussed in the city council as early as 1996.

The city has proffered few reasons for its refusal to ameliorate the retrogressive impact of the proposed Ward 1 annexations, asserting that Ward 1 has a lower population than other wards and that the annexations therefore should be designated to that ward. Yet we understand that the city had recently considered a limited redistricting, which would link these annexations to Ward 6, a ward with fewer registered voters than Ward 1. The city also asserts that these annexations were designated to Ward 1 because they were not directly contiguous to any other wards. However, the city's consideration and rejection of alternatives to this designation in order to cure this retrogression demonstrates that the city did not consider its options limited by the location of the annexations.

The city asserts that this land was vacant when annexed and therefore could not have had any negative impact on minority voting strength and is therefore unobjectionable. The law is clear, however, that the effect of an annexation is to be determined by the most currently available population data when an annexation is submitted for preclearance. City of Rome v. United States, 446 U.S. 156, 186 (1979); 28 C.F.R. 51.54(b)(2). Here, the city waited several years before it sought preclearance of the Ward 1 annexations. Additionally, it was clear that the city was aware at the time of the annexations that they were slated for significant residential development in the near future with homes that were beyond the financial means of minorities in the area.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In light of the considerations discussed above, I am unable at this time to conclude that the City of Alabaster has carried its burden of showing that the designation of Ward 1 annexations has neither a discriminatory purpose nor a discriminatory effect. Therefore, on behalf of the Attorney General, I must object to the designation of the annexations (Ordinance Nos. 94-338 and 96-410) to Ward 1. We will continue our review of the information most recently submitted to assess whether this information would affect our determination and we will notify you of the results of this review as soon as possible.

We note under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the objection by the Attorney General remains in effect and the designation of Ordinance Nos. 94-338 and 96-410 to Council Ward 1 continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10, 51.11, 51.45, and 51.48(c) and (d). Therefore, residents of the areas annexed by Ordinance Nos. 94-338 and 96-410 may vote for the mayoral position in the upcoming election but may not vote in the Ward 1 city council race.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Alabaster plans to take concerning this matter. If you have any questions, you should call Judybeth Greene (202-616-2350), an attorney in the Voting Section. Please refer to File No. 2000-2230 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Bill Lann Lee  
Assistant Attorney General  
Civil Rights Division